UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/601,773	06/23/2003	Edward A. Youngs	020366-067210US	9495

20350 7590 04/15/2005

TOWNSEND AND TOWNSEND AND CREW, LLP
TWO EMBARCADERO CENTER
EIGHTH FLOOR
SAN FRANCISCO, CA 94111-3834

EXAMINER	
STEIN, JULIE E	

ART UNIT	PAPER NUMBER
2685	

DATE MAILED: 04/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/601,773	YOUNGS ET AL.	
	Examiner	Art Unit	
	Julie E. Stein, Esq.	2685	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *23 June 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *22-29* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *22-29* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *6-23-03*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 22 to 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,014,569 to Bottum in view of U.S. Patent No. 6,389,463 to Bolas et al.

With regard to the independent claims, 22, 23, 24, and 27, Bottum teaches a method for providing transmission of a selected media program to a wireless handset deployed in a wireless network having at least one cell site coverage area associated therewith (see abstract), the method comprising, receiving at least one transmission comprising a media program from a media program provider (column 5, lines 19 to 32), receiving a request from at least one wireless handset selecting a media program (column 5, lines 40 to 50), and transmitting the selected media program to the wireless handset (column 6, lines 12 to 47).

However, Bottum does not explicitly teach that the request comprises a wireless signal that represents call letters associated with a radio station (claim 22), call letters associated with a television station (claim 23), a frequency associated with a radio station (claim 24), or a channel associated with a television station (claim 27). But, Bolas teaches in the same field of endeavor, an internet radio that can be tuned by selecting a radio band/frequency/station that is then represented as an URL and, which

uses cellular communications to connect to the internet to send the identifying station information wirelessly. See column 3, line 25, column 4, lines 46 to 50, column 6, lines 40 to 56, and column 9, lines 22 to 36. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made, to use the representation of radio or television call letters or station frequencies to identify a specific radio or television station because their use allows a user to easily interact with the internet radio. See, Bolas, column 2, lines 1 to 23.

Regarding dependent claims 25 to 26 and 28 to 29, Bottum in view of Bolas teach all the steps of these claims, including the wireless handset located at a physical location and the signal represents the frequency/channel of a radio/television station having broadcast range comprising the physical location (claims 25/28) (Bottum, Figure 1, elements 104 and 102, and column 6, lines 1 to 47) and having a broadcast range not comprising the physical location (Id.). Bolas also teaches both the wireless handset being physically located and not physically located within the radio/television broadcast range. See column 7, line 60 to column 8, line 23, which allows the selection of geographic origin of the desired audio source.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double

patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 22 to 29 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 4-11, 14-21 of U.S. Patent No. 6,600,918 to Youngs et al. in view of Bolas.

With regard to the independent claims, 22, 23, 24, and 27, Young teaches a method for providing transmission of a selected media program to a wireless handset deployed in a wireless network having at least one cell site coverage area associated therewith (see claims 1 and 11), the method comprising, receiving at least one transmission comprising a media program from a media program provider (Id.), receiving a request from at least one wireless handset selecting a media program (see claims 1, 4-11, and 14-21), and transmitting the selected media program to the wireless handset (see claims 1 and 11).

However, Youngs does not explicitly teach that the request comprises a wireless signal that represents call letters associated with a radio station (claim 22), call letters associated with a television station (claim 23), a frequency associated with a radio station (claim 24), or a channel associated with a television station (claim 27). But, Bolas teaches in the same field of endeavor, an internet radio that can be tuned by selecting a radio band/frequency/station that is then represented as an URL and, which uses cellular communications to connect to the internet to send the identifying station information wirelessly. See column 3, line 25, column 4, lines 46 to 50, column 6, lines

40 to 56, and column 9, lines 22 to 36. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made, to use the representation of radio or television call letters or station frequencies to identify a specific radio or television station because their use allows a user to easily interact with the internet radio. See, Bolas, column 2, lines 1 to 23.

Regarding dependent claims 25 to 26 and 28 to 29, Youngs in view of Bolas teach all the steps of these claims, including the wireless handset located at a physical location and the signal represents the frequency/channel of a radio/television station having broadcast range comprising the physical location (claims 25/28) (see Youngs, claims 7-10 and 17-21) and having a broadcast range not comprising the physical location (Id.). Bolas also teaches both the wireless handset being physically located and not physically located within the radio/television broadcast range. See column 7, line 60 to column 8, line 23, which allows the selection of geographic origin of the desired audio source.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent No. 6,829,475 to Lee et al teaches an internet radio that wirelessly connects to the internet and controls AM, FM, TV, and digital audio broadcast receivers.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julie E. Stein, Esq. whose telephone number is (571) 272-7897. The examiner can normally be reached on M-F (8:30 am-5:00 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Urban can be reached on (571) 272-7899. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Nguyen Vo 4-14-2005

JES

NGUYEN T. VO
PRIMARY EXAMINER